tiffs' claim for the injunctions which they seek against the defendants. The plaintiffs' claim for the injunctions is clearly unsustainable. The court will not allow the prosecution of such frivolous and hopeless litigation which will only result in waste of time and expense and undue harassment to the defendants.

The defendants' application is allowed. The writ and the statement of claim filed by the plaintiffs are both struck out with costs.

Order accordingly.

Solicitors: *Shafee & Co*; *Rashid & Lee.*

Reported by *Ng Sheau Jiuan*

Re Kian Hin & Co and another application

HIGH COURT (MALACCA) – ORIGINATING MOTION NOS 32-1 OF 1988 AND 32-2 OF 1988
WAN YAHYA J
24 MAY 1988

Land Law – Land Appeal Board's order to vacate rent control premises – Order of certiorari sought to quash order – No minutes of proceedings before Appeal Board taken – Appeal Board's failure to consider all appeal grounds of applicants – Whether proper hearing existed – Control of Rent Act 1966, ss 12(8), 15(4) – Control of Rent (Malacca) (Rent Tribunal and Appeal Board) Rules 1970, rr 26 & 27

Administrative Law – Certiorari sought against Land Appeal Board's order to vacate rent control premises – No minutes of proceedings before Appeal Board taken – Appeal Board's failure to consider all appeal grounds of applicants – Uncertainty as to when undated written judgment of Land Appeal Board was pronounced – Serious errors of law – Jurisdiction of Board affected

The applicants, who are tenants of rent control premises, were ordered by the Land Tribunal to vacate the premises occupied by them after hearing an application by the landlord under s 18 of the Control of Rent Act 1966 ('the Act'). The tenants appealed against the entire decision of the Land Tribunal to the Land Appeal Board. At the hearing of the appeal, of which no records were available, the board dismissed the appeal. Evidence of this hearing only appeared incidentally in the order of the Board dated 27 February 1987. The applicants applied to the High Court for an order of certiorari to quash the order of the Appeal Board, relying, inter alia, on these grounds: (a) the Appeal Board denied their rights to have their cases re-heard before the board under r 26 of the Control of Rent (Malacca) (Rent Tribunal and Appeal Board) Rules 1970 ('the Rules'); (b) the Appeal Board did not consider the applicants' dissatisfaction with the tribunal's findings relating to all the three requirements under s 18(1) of the Act.

Held, allowing the applications:

(1) Under r 26 of the Rules, it is obvious that the tenants are not only entitled by law to have their cases re-heard before the board but the board is further given the power to receive further evidence both orally and by affidavit.

(2) It is clear from s 15(4) when read with s 12(8) of the Control of Rent Act 1966 that the chairman of the Appeal Board is obliged to keep minutes. In the absence of such minutes of proceedings, the court would presume that there had been no proper re-hearing. A denial to the applicants of their rights to a re-hearing is an act clearly affecting the principle of natural justice. A judgment arrived at in breach of this principle is a nullity.

(3) The applicants had expressed their dissatisfaction with the tribunal's findings relating to all the three requirements under s 18(1) of the Act but the grounds of decision indicate that the chairman had merely considered the provision of s 18(1)(b) and had entirely disregarded the other two provisions. The applicants were entitled to be heard on the other two grounds.

(4) Under r 27, the judgment of the Appeal Board must be pronounced on the hearing of the appeal or at a subsequent date. The order under s 32 was made on 27 February 1987 whereas the hearing, according to the order, was on 18 February 1987. As the judgment was undated, it is impossible to say whether it was pronounced on the date of hearing on 18 February or 27 February. As it was not an oral judgment, it is unlikely to be pronounced on the date of hearing.

(5) The three errors of law are of a serious nature. Taken together, they amounted to a denial of justice to the applicants which had affected the jurisdiction of the board.

Legislation referred to
Control of Rent Act 1966 s 12(8), 15(4), 18(1)
Control of Rent (Malacca) (Rent Tribunal and Appeal Board) Rules 1970 rr 26, 27

Ong Beng Hian for the landlord.
Yau Jiok Hua for the applicants.

Cur Adv Vult

Wan Yahya J: The two originating motions are substantially identical except for the names of the applicants. In both these cases the applicants prayed for an order of certiorari to quash the order of the Rent Board.

The facts of the case, as I can gather from some of the records produced before us, are as follows: the applicants who are tenants of rent control premises were ordered by the Appeal Board to vacate the premises occupied by them. At the initial hearing before the Land Tribunal – the records of proceedings of which were properly kept and produced before us as exhibits – the landlord had applied under s 18 of the Control of Rent Act 1966 for possession for development purposes. The tenants opposed this application on the grounds that the requirements of s 18(1) had not been fully satisfied. The Rent Tribunal after hearing both parties came to the conclusion that these requirements, in particular provision 18(1)(b) had been satisfied. The tenants then appealed against the entire decision of the Land Tribunal. In their memorandum of appeal the solicitors for the tenants set out specifically their dissatisfaction with the

findings of the tribunal in respect of s 18(1)(a)(b) and (c) as well as s 18(2).

At the hearing of the appeal before the Land Appeal Board of which no records were available and presumably none was kept, the board dismissed the appeal. Evidence of this hearing only appeared incidentally in the order of the board dated 27 February 1987.

The applicants particularized seven grounds upon which they sought the relief out of which only three merit our consideration.

One such ground is that the Appeal Board denied the applicants their rights to have their cases re-heard before the Board as required under r 26 of the Control of Rent (Malacca) (Rent Tribunal and Appeal Board) Rules 1970.

Section 26 reads:

> The appeal shall be by way of re-hearing by the Appeal Board which shall have full power to receive further evidence by oral examination before the board, by affidavit or by evidence taken before an examiner or Commissioner of Oaths.

It is obvious from the above that the tenants are not only entitled by law to have their cases re-heard before the board but the board is further given the power to receive further evidence both orally and by affidavit.

In this case, as I observed earlier, no records of the proceedings before the Appeal Board were available and therefore there is nothing to suggest that the applicants' allegations were untrue. On the contrary, the undated written judgment signed by the chairman of the Appeal Board appeared to have based its conclusion allegedly on the documents and records of proceedings before the Land Tribunal. If there was any record of proceedings I am sure it would have been produced by the respondents. Failure to produce such records must lead to the inference that none was kept and therefore no re-hearing was accorded to these applicants. It is clear from s 15(4) when read with s 12(8) of the Control of Rent Act 1966 that the chairman is obliged to keep minutes. In the absence of such minutes of proceedings I would presume that there had been no proper re-hearing. A denial to the applicants of their rights to a re-hearing is an act clearly affecting the principle of natural justice. A judgment arrived at in breach of this principle is a nullity.

The next ground relates to the failure of the Appeal Board to consider the grounds of appeal. The applicants had expressed their dissatisfaction with the tribunal's findings relating to all the three requirements under s 18(1) but the grounds of decision indicate that the chairman had merely considered the provision of s 18(1)(b) alone and had entirely disregarded the other two provisions. There is a great difference between a defective decision arrived at after hearing a case and a decision made without hearing the appellant's case at all. The applicants were entitled to be heard on the other two grounds and failure to decide these had deprived them of their chances to succeed in the appeal.

The third point raised by the applicants is on the nature of the written judgment. The applicants contend that it is not the unanimous decision of the board but was merely the decision of the chairman as nothing therein indicates that the other two had concurred with him. However, counsel for the applicants was not able to cite any relevant provision showing that the decision should be unanimously made.

Now if I may refer to the undated judgment. Under r 27 such judgment must be pronounced on the hearing of the appeal or at a subsequent date. The order under s 32 was made on 27 February 1987 whereas the hearing, according to the order, was on 18 February 1987. As the judgment was undated it is impossible to say whether it was pronounced on the date of hearing on 18 February 1987 or 27 February 1987. As it was not an oral judgment it is unlikely to be pronounced on the date of hearing.

To my mind the three errors of law accounted above are of a serious nature. Taken together they amounted to a denial of justice to the applicants which had affected the jurisdiction of the board.

I shall therefore allow the application and quash the order of the Board.

Applications allowed.

Solicitors: *Allen, Gledhill & Ball*; *Yau Jiok Hua & Co.*

Reported by *Ng Sheau Jiuan*